

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on January 9, 2008. A Terminal Disclaimer and a Petition for a Three (3) Month extension of time are submitted herewith. The Director is authorized to charge the amount of \$1180.00 for the cost of the Terminal Disclaimer (\$130.00) and the Petition for the Three Month extension of time (\$1050.00), and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-514 on the account statement.

Claims 1-20 are pending in this application. In the Office Action, Claims 1-20 are rejected under 35 U.S.C. § 112. Claims 1-20 are rejected under 35 U.S.C. §102(b). Claims 1-20 are rejected on the ground of nonstatutory obviousness-type double patenting. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully request that the rejections be withdrawn.

In the Office Action, Claims 1-20 are rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Patent Office states that the phrase “for promoting breakage” in Claims 1 and 17 is a relative phrase which renders the claim indefinite. See, Office Action, page 2, lines 6-17. In response, Applicants respectfully submit that the skilled artisan would understand the scope of the present claims when read in view of the specification.

Currently amended independent Claims 1 and 17 recite, in part, a heating attachment for improving uniformity of microwave heating of a food product in a container, comprising a shield of microwave-reflective material, a cradle configured for attaching the shield to the container in an operative association in which the container is disposed in a heating space surrounded by the shield such that the shield improves the uniformity of microwave heating of a food product within the container, and at least one portion that prevents upward extraction of the container from the heating space, the heating attachment sufficiently surrounding the container in the operative association to capture the container for promoting breakage of the heating attachment when the container is removed therefrom. The amendments do not add new matter. The amendments are supported in the specification at, for example, page 2, line 30-page 3, line 10.

Applicants respectfully submit that, when read in view of the specification, the skilled artisan would immediately appreciate what is meant by the phrase “for promoting breakage,” as recited, in part, by the present claims.

For example, the specification is replete with descriptions of how the heating attachment “sufficiently surrounds,” “positively trap[s],” “trap[s] and hold[s],” “captures,” and “circumferentially shield[s],” the container when the container is in the heating space. See, specification, page 2, line 15-page 3, line 10; page 5, lines 12-16. Further, the specification also describes how “several portions” of the heating attachment are used to “prevent extraction” of the container from the heating space. Specifically, in one embodiment, “[h]ooks prevent upward extraction, the base portions 50 prevent downward extraction, and side members 54 prevent horizontal extraction.” See, specification, page 7, line 33-page 8, line 2.

Further, the specification is also replete with descriptions of how, as a consequence of the heating attachment preventing extraction of the container from the heating space, the heating attachment must be designed “for promoting breakage” of the heating attachment so that the user of the heating attachment is able to access the heated food product in the container. For example, the specification describes how, in one embodiment, a support member captures the container to promote breakage of at least a portion of a the support member such that the portion of the support member is configured for “tearing to remove the container from the heating attachment.” See, specification, page 2, line 30-page 3, line 5. The specification further describes how a container may be “clasped in such a manner to promote or require breakage of the attachment to remove” the container, and how the container “may be torn to remove” the container. See, specification, page 8, line 26-page 9, line 4.

As such, the specification clearly describes the relationship between the heating attachment and the container such that the skilled artisan would immediate understand that the heating attachment is designed “for promoting breakage” so that the container may be removed from the heating attachment that prevents extraction of the container in all directions. Therefore, Applicants respectfully submit that the skilled artisan would understand the scope of the present claims when read in view of the specification.

In the Office Action, Claims 1-20 are rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent Application No. 2003/0189042 to Zhang et al. (“Zhang”). In view of the

amendments, Applicants respectfully submit that *Zhang* is deficient with respect to the present claims.

As described above, currently amended independent Claims 1 and 17 recite, in part, a heating attachment for improving uniformity of microwave heating of a food product in a container, comprising at least one portion that prevents upward extraction of the container from the heating space, the heating attachment sufficiently surrounding the container in the operative association to capture the container for promoting breakage of the heating attachment when the container is removed therefrom. In contrast, Applicants respectfully submit that *Zhang* fails to disclose each and every element of the present claims.

For example, *Zhang* fails to disclose or suggest a heating attachment that comprises at least one portion that prevents upward extraction of the container from the heating space as is required, in part, by the present claims. The specification describes many different embodiments of the present invention that include portions of a heating attachment that serve to prevent upward extraction of a container that is contained in a heating space including, but not limited to, protrusions such as ledges, rims, hooks, other protrusions and first and second portions that are attached to each other. See, e.g., specification, page 3, lines 6-10. In contrast, *Zhang* fails to disclose or even mention a portion that prevents upward extraction of a container from a heating space as is required, in part, by the present claims.

Zhang also fails to disclose or suggest a heating attachment that sufficiently surrounds a container in operative association to capture the container for promoting breakage of the heating attachment when the container is removed therefrom as is required, in part, by Claims 1 and 17. Instead, *Zhang* is directed toward a container for receiving and reheating food in a microwave oven. See, *Zhang*, Abstract. Although *Zhang* discloses a supporting stand comprising a reflective material to nest a container during heating, the stand is arranged to snugly engage the container and nest the container in a “removable” manner. See, *Zhang*, page 4, [0055]. As such, *Zhang* fails to disclose a heating attachment that sufficiently surrounds a container in operative association to capture the container for promoting breakage of the heating attachment when the container is removed.

The Patent Office asserts that because the prior art structure is capable of performing Applicants’ intended use, it meets the present claims. However, based on the configuration in

Zhang, if it were capable of performing Applicants intended use, the embodiment illustrated in Figures 5-7 would not function as intended. This embodiment is predicated on a supporting stand adapted to substantially nest the container in a removable manner and further comprise a leverage means adapted for conveniently and safely disengaging the container from the metal body. See, *Zhang*, pages 4-5, [0055]. In particular, the stand has a body with a “wedge-shaped receiving surface of microwave reflective material arranged to snugly engage the complementary shaped exterior surface of the sidewalls of the container.” See, *Zhang*, page 5, [0055]. When functioning, the leverage means will push on the bottom side of the container to lift the container off the body of the receiving surface. If the Patent Office was correct and *Zhang* disclosed a container for promoting breakage of a heating attachment when the container is removed therefrom, the leverage means could not function because the configuration of the heating attachment would inhibit upward movement of the food container when pushed by the leverage means. This would be completely contrary to the intended use of the invention in *Zhang*, which was provided, as stated above, for a supporting stand adapted to substantially nest the container in a removable manner and further comprise a leverage means adapted for conveniently and safely disengaging the container from the metal body.

In fact, all embodiments described and illustrated in *Zhang* employ the same wedge-shaped receiving surface, meaning that the upper portion of the receiving surface has a larger diameter than the bottom portion. See, *Zhang*, Figures 1-7. As a result, after cooking, the food product is easily removable from the receiving surface because there is both nothing inhibiting the upward removal of the food/container or nothing that need be broken to allow removal of the food/container.

For at least these reasons, Applicants respectfully submit that *Zhang* does not teach, suggest, or even disclose all of the elements of Claims 1-20 and thus, fails to anticipate the claimed subject matter.

Accordingly, Applicants respectfully request that the anticipation rejections with respect to Claims 1-20 be reconsidered and the rejections be withdrawn.

In the Office Action, Claims 1-20 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claim 33 of co-pending U.S. Appl. No. 10/955954 in view of U.S. Publ. No. 2003/0189042. Submitted with this response is a

Terminal Disclaimer disclaiming the terminal part of any patent granted on the pending application extending beyond the expiration date of U.S. Appl. No. 10/955954.

Accordingly, Applicants respectfully request that the provisional rejection of Claims 1-20 under obviousness-type double patenting be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

BELL, BOYD & LLOYD LLP

BY 

Robert M. Barrett
Reg. No. 30,142
Customer No. 29157
Phone No. 312-807-4204

Dated: July 8, 2008